

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	

**COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

Pursuant to the Further Notice of Proposed Rulemaking (FNPRM) adopted in conjunction with the Report and Order, Order and Order on Reconsideration (Order) in the above-referenced proceeding,¹ USTelecom – The Broadband Association² respectfully submits these comments responding to the Commission’s request for additional comment on various aspects of Universal Service Fund reform as it applies to rate-of-return service providers and on streamlining ETC reporting obligations as it applies to price cap carriers as well.

¹ See *In the Matter of Connect America Fund, ETC Annual Reports and Certifications, Developing a Unified Intercarrier Compensation Regime*, WC Docket Nos. 10-90, 14-58 and CC Docket No. 01-92, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16-33 (Mar. 30, 2016) (*Rate of Return Reform Order* and *FNPRM*).

² USTelecom is the premier trade association representing service providers and suppliers for the telecom industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications service to both urban and rural markets.

In October 2015 the FCC issued a Public Notice³ indicating that permitted expenses do not include personal travel, entertainment, alcohol, food, including but not limited to meals to celebrate personal events, political contributions, charitable donations, scholarships, penalties or fines for statutory or regulatory violations, penalties or fees for any late payments on debt, loans, of other payments, gifts to employees and personal expenses of employees, board members, family members of employees and board members, contractors, or any other individuals affiliated with the ETC, including but not limited to personal expenses for housing such as rent or mortgages. Now the Commission is asking if it should issue an Order and/or rules to define what are or are not prohibited expenses or is there a way to justify them or create a definable subset.

USTelecom notes that the majority of these items have been precluded from cost recovery for years, but other items on the list have been specifically included in cost recovery. USTelecom members are concerned that the actions of bad actors in the Rural Local Exchange Carrier (RLEC) ecosystem such as Sandwich Isles Communications, Inc.⁴ unfairly reflects poorly on all RLECs thereby causing the Commission to unnecessarily consider potentially overly prescriptive rules that would not allow RLECs to make legitimate discretionary business decisions about their operations. One primary area of concern is meals and entertainment. While there is probably reasonable argument for eliminating costs associated with entertainment, providing food for employees while traveling on business or

³ *All Universal Service High Cost Support Recipients are Reminded That Support Must Be Used For Its Intended Purpose*, Public Notice, WC Docket Nos. 10-90 & 14-58, FCC 15-133 (Oct. 19, 2015).

⁴ *See Sandwich Isles Communications, Inc. Petition for Declaratory Ruling*, WC Docket No. 09-133, Declaratory Ruling, 25 FCC Rcd 13647 (WCB 2010); Letter from B. Lynn Follansbee, VP – Law & Policy, USTelecom to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-133 (Apr. 28, 2016).

maintaining/rewarding productivity are legitimate business purposes. These are costs that cannot simply be eliminated, so their exclusion from cost recovery would be very concerning.

Likewise, the FCC's proposal to remove certain general support assets from interstate revenue requirements and additional High Cost Support (they are already excluded from HCLS) is concerning in that some of these are common in all business environments and provide for a reasonable and comfortable work environment to attract and retain employees. RLECs should be permitted to make reasonable business-related decisions about what assets fall into the permissible general support assets category.

Similarly, USTelecom believes that in crafting any policies or rules with respect to executive and board compensation it is important that the Commission not create unnecessarily prescriptive requirements that would negatively impact an RLEC's ability to attract and retain qualified management. The Commission has already encompassed executive and board compensation in its existing corporate operations expense limitation⁵ and more recently, in the recent Order tightened the constraints in the overall operating expense limitation.⁶ USTelecom believes that in this regard many of these expenses are already scrutinized and do not require additional constraint. Overall, RLECs understand that there is a need to ensure that costs are not excessive, but need the ability to manage their costs within an overall limitation rather than granular limitations on an account by account basis. If a company can hire an executive or board

⁵ See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*; WC Docket No. 10-208; Report and Order Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17747-48, paras 227-233 (2011); aff'd sub nom., *In re: FCC 11-161*, 753 F.3d. 1015 (10th Cir. 2014).

⁶ See *Rate of Return Reform Order* at paras. 95-104.

member with multiple skill sets, which may save costs elsewhere, shouldn't they have the ability to manage their limited expenses to meet their specific needs?

The Commission also asks whether the current terms “used and useful,” “prudent expenditure,” and, “necessary to the provision of” are adequately defined to ensure that only permitted expenses are claimed. With respect to the discussion of “used and useful” assets (building and capacity leases) it seems unnecessary to further expand on this requirement because there is already a 2-year timeframe established for the life of the asset. Likewise, a more narrow definition of the terms “prudent expenditure” and “necessary to the provision of” could unintentionally limit the amount of capacity that an RLEC can install when building new facilities. For example, a company may only need a 12 fiber cable today, but installs a 48 fiber cable because the incremental cost of doing so is nominal compared to later installing additional fiber. Again, restricting the definition of this term and the others would only serve to paint over all RLECs with a very broad brush due to the bad behavior of a small subset of RLECs.

USTelecom does agree that some additional clarification on affiliate transactions may be necessary to ensure compliance with the rules, especially as it relates to the calculation of fully distributed costs, as they are currently very broad. However, RLECs have operated for years under the existing flexible rules; therefore clarification now may call into question long standing procedures. Given that the tenor of the Commission's current policy seems to be an overall effort to simplify and streamline requirements and not create a further morass of accounting rules and procedures, if clarification is made, it should be on a prospective basis only.

In the same way, the Commission should be prudent in its review of its rules related to transactions with non-affiliates, as any changes could limit companies' ability to purchase services that are necessary to their business. USTelecom submits that any necessary limitations

are already covered through the implementation of the overall limitation on operating expenses, therefore, applying a review to all transactions would be overly burdensome to both the company and regulators, as documentation and review of all decisions would be required.

Generally, with respect to the reporting obligations raised in the FNPRM, USTelecom believes that as the Connect America Fund (CAF) is moving into Phase II the FCC needs to give careful consideration as to the scope and purpose of each ETC reporting obligation. The reporting obligations should be effectively and efficiently tailored to monitoring ETCs' modified service obligations. For example, for carriers that have already accepted CAF Phase II support or will accept such support through the upcoming CAF Phase II auction, their reporting obligations should be limited to only those areas where they have accepted CAF Phase II support. Additionally, reporting obligations should be limited to the collection of data or information that is directly relevant to the goals and obligations of the CAF II program. In other words, reporting should be tailored and relevant (*i.e.*, it should have some practical utility as required by the Administrative Procedure Act). To the extent that there are different service obligations for different types of high cost support, then the Commission should consider adopting different reporting requirements.

More specifically, the FCC asks whether to modify or eliminate the following five sets of requirements: outage information, unfulfilled service requests, the number of complaints per 1,000 subscribers for both voice and broadband service, pricing for both voice and broadband service, and certification that a carrier is complying with service quality standards and what the costs are associated with providing that information. USTelecom supports the elimination of these reporting requirements as unnecessary, duplicative, or not useful to the FCC for evaluating

compliance with specific high-cost program requirements, particularly CAF Phase II requirements, as explained below.

The FCC Form 481 outage definition for voice is slightly different than the Network Outage Reporting System (NORS) definition, however it is not clear why this is the case, and regardless, the data reported is essentially duplicative, therefore, NORS reporting should be sufficient. In the context of broadband, the FCC has yet to define what constitutes an outage for broadband purposes; therefore it would make sense to eliminate the requirement.

The FCC should eliminate the unfulfilled service request reporting requirement unless it can clarify the purpose and scope of the reporting for both voice and broadband in the context of the CAF program requirements. Currently, it is not clear what constitutes an “unfulfilled” voice service request. For example, one interpretation, which we believe is incorrect, could be that it is any order placed for voice service that did not result in the carrier providing voice service even if that order were withdrawn by the customer as opposed to only those orders placed that were not withdrawn by the customer, and did not result in the carrier providing the service. Still another interpretation, again, which we believe is incorrect, could be orders placed in the prior calendar year that were pending at the end of the year. It is also not clear what encompasses the scope of the reporting obligation. If the FCC retains the requirement for broadband, the FCC would have to revise the requirement according to each program requirement. Specifically, price cap carriers that accepted CAF Phase II funding do not have an obligation to fulfill every request for broadband service. Instead they are required to deploy and offer broadband to an FCC-identified number of locations. Thus, the only potentially relevant “unfulfilled” service request reimbursement for these carriers is limited to those CAF Phase II geocoded locations reported to the FCC. When a CAF Phase II recipient reports geocoded locations it is certifying that it is

offering qualifying broadband service to those locations. In other words, a location cannot be reported unless service can be fulfilled. Thus a separate reporting requirement is redundant and unnecessary.

Similarly, the FCC should do away with the number of complaints per 1,000 subscribers reporting requirement or at the very least clearly define “complaint.” Without a clear definition different providers interpret “complaint” differently, resulting in a collection of useless information from a comparison standpoint.

With respect to pricing, the FCC should eliminate this requirement for both voice and broadband service. This reporting should be eliminated because the reasonable comparability of certification should be sufficient for demonstrating that voice and broadband pricing is in accord with ETC high-cost service obligations.

The service quality standards compliance certification is also unnecessary. Currently, it is not even clear how “applicable service quality standards” to which ETCs are certifying compliance with are defined for the various different types of “voice telephony” that qualify as supported or what constitutes “compliance.” As a result, it is hard to imagine that the FCC finds these certifications of any value.

Finally, although not explicitly mentioned by the Commission, another current reporting requirement in need of significant revision is the so-called Tribal engagement rule.⁷ This rule remains subject to several petitions for reconsideration that have gone unaddressed for years.⁸

The passage of time has done nothing to cure the legal infirmities USTelecom and others

⁷ 47 C.F.R. § 54.313(a)(9).

⁸ See Petition for Reconsideration of the United States Telecom Association, WC Docket No. 10-90 *et al.*, at 17-19 (filed Dec. 29, 2011); Petition for Reconsideration of the Rural ILECs Serving Tribal Lands, WC Docket No. 10-90 *et al.* (filed Dec. 29, 2011); Petition for Reconsideration and Clarification of the United States Telecom Association, WC Docket No. 10-90 *et al.* (filed Aug. 20, 2012) (USTelecom August 2012 Petition).

identified back in 2011 and 2012. As part of its order cleaning up the existing high-cost reporting requirements, USTelecom urges the Commission to address these pending petitions. In so doing, at a minimum, the Commission should limit application of this rule to those entities that actually receive high-cost support to fund broadband deployment on Tribal lands.⁹

The FCC also asks about shifting from the current FCC Form 481 filing process to only filing FCC Form 481s with USAC. USTelecom supports a single filing of the FCC Form 481 with USAC as opposed to multiple filings with the FCC, USAC, state entities and Tribal governments. A single filing would be much easier than the current filing process. However, USTelecom remains concerned about maintaining the confidentiality of certain information provided across state and tribal governments. For example, certain state-specific information that carriers provide on a confidential basis to a specific state PUC, is not necessarily treated on the same confidential basis by other state PUCs. The same is true of certain Tribe-specific confidential information. The system under which there was only a single filing with USAC would have to be able to preserve the confidentiality of certain information USTelecom members currently submit on their FCC Form 481s.

If, however, the FCC Form 481 required information could be altered so that all information ETCs were required to submit was not confidential information, then a single filing would be effective. For USTelecom, this would include (1) removing outage reporting from FCC Form 481 filing; (2) revising broadband pricing information to remove reporting of multiple higher speeds of broadband by exchange; and (3) permitting a certification for Tribal outreach in lieu of actual detailed reporting of outreach activities. Thus the confidentiality issue would be resolved by the modification recommended above that would entirely eliminate these

⁹ See, e.g., USTelecom August 2012 Petition at 3-6.

categories of reporting requirements. Additionally, as a result of this proceeding as well as at any time thereafter that the Commission deems it necessary to make changes to the FCC Form 481, USTelecom requests that the Commission put the form with the proposed changes out for FCC comment prior to adopting the changes that affect all carriers. Not only is this valuable from a substantive perspective but as USAC automates its reporting systems, carriers will be designing their own systems to collect the necessary data and interface with USAC. Reporting carriers therefore need ample notice of any proposed changes and time to implement them in their own systems.

USTelecom applauds the Commission for seeking ways to streamline and encourage additional efficiencies in the elements of the Universal Service program raised in this FNPRM. However, we also urge the Commission to act in a considered fashion noting that the many elements raised herein potentially have unforeseen economic impacts on RLECs. Providing clarification and efficiencies in the processes is consistent with the Commission's policy goals, and if done prudently will provide certainty, stability, and predictable support as part of the overall reform framework, and would help carriers meet the Commission's goals for improvement and extension of broadband facilities and service.

Respectfully submitted,

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